

82D CONGRESS
2d Session

} HOUSE OF REPRESENTATIVES {

REPORT
No. 2391

LESLIE A. CONNELL

JULY 1, 1952.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1988]

The Committee on the Judiciary, to whom was referred the bill (S. 1988) for the relief of Leslie A. Connell, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The bill would provide for payment of the sum of \$2,622 to Leslie A. Connell, of Tacoma, Wash., in full satisfaction of his claim against the United States for reimbursement of the sum of \$2,500 paid by him in satisfaction of a judgment rendered against him as the result of his injuring a pedestrian while driving a Government-owned vehicle in the performance of his duties as a mail collector, and the sum of \$122 paid by him for court costs, attorney fees, and filing fees in connection with such judgment.

STATEMENT

An identical bill was passed by the Senate in the Eighty-first Congress and failed of enactment in the House because of lack of time.

Claimant, a parcel-post carrier for the Tacoma, Wash., post office, on April 15, 1946, struck one Frank X. Beutner, a pedestrian, while backing his mail truck up to the loading platform at the Tacoma Post Office Building. Beutner, as a result of the accident, suffered a broken leg.

Since 1931, the Tacoma post office has maintained a loading platform in the rear of the post office, extending the width of the building and fronting on South Twelfth Street. It has been customary, since the above-mentioned date, for trucks loading and unloading mail to swing out into Twelfth Street in order to back up over the sidewalk so the rear of the truck will face the loading dock.

Claimant, who was returning from a relay and collection trip, had turned in the direction opposite the loading platform in the usual manner and was backing the truck up to the loading platform, across the Twelfth Street sidewalk, when the accident occurred. He was proceeding in reverse at a slow speed when he felt the impact. He stopped immediately. Connell stated that he looked in both the right and left rear-view mirrors of the truck while proceeding in reverse and did not see the pedestrian.

The injured person stated in an affidavit dated May 29, 1947, which was filed with the post-office inspector:

I do not know why I did not see him (Connell) approaching except that I may have had something on my mind, and it is also a fact that I do not have the use of my right eye, which was toward the backing truck.

Beutner filed a claim against the United States on October 11, 1946. He later withdrew this claim and on February 21, 1948, sued Connell and his wife for \$11,741.86 in the Superior Court of Pierce County, Wash. A judgment for \$4,000 was rendered but was later reduced to \$2,517.

The record indicates that Connell was a faithful and efficient employee for 29 years. This was his first accident.

The Post Office Department and the Department of Justice recommend favorable consideration of the bill. The basis for the Post Office Department recommendation is contained in the following paragraph which is quoted from the Department's letter dated March 18, 1949:

The suit which formed the basis of this claim might have been brought against the United States under the provisions of the Federal Tort Claims Act. However, the plaintiff elected to sue the carrier personally. It would be inequitable to require the carrier to bear this loss out of his personal funds since the claim was predicated upon an accident in which he was involved in pursuance of his official duties as a mail-truck driver.

The question arising out of the above facts is, Why should Congress reimburse a Government employee when a judicial tribunal has handed down a judgment based upon his negligence? This committee believes that it is not in order to overrule the court, but rather it prefers to examine the equities involved. The Federal Tort Claims Act was originally passed to provide for suit against the Government on tort claims. However, there is nothing in the act to prevent a person who has sustained injuries or damage through the act or omission of an agent of the Government from electing to proceed against the agent rather than against the Government.

This is not a novel question for the committee to resolve. It has recognized in substantially similar circumstances the inability of a driver of a Government vehicle to protect himself through insurance as can a private citizen. Pursuant to the consideration of H. R. 2078, Eighty-first Congress, first session, later enacted as Private Law 129, Eighty-first Congress, first session, the committee stated (S. Rept. 458, 81st Cong., 1st sess., at p. 3):

Here the claimant, unfortunately for him, was sued directly and successfully. The merits of his claim would perhaps be weakened fatally, if it were not for the insurance element. The Government does not insure its vehicles nor do its employees. Thus, the employees in cases where they are sued directly are not protected and cannot protect themselves; they are actually in a weaker position than a private citizen.

Favorable consideration of this bill presents the further question as to whether the Congress may be relieving a Government employee from the consequences of his own negligence. Claimant is one of many thousands of Government employees, with a distinguished record of faithful and conscientious service. The accident involved herein was the first one for claimant during 29 years of Government employment. The injured party was free to make a choice, under existing law, as to whom he might sue for damages: the employee in a personal capacity, or the Government, for whom the employee was acting at the time the accident occurred. The injured party herein chose to sue the employee individually, and has recovered a judgment against him, which has been satisfied by the latter out of his personal funds. In the circumstances it is to be presumed that the injured party likewise would have been successful had he proceeded with suit against the Government. Hence, in the absence of a showing of willful negligence, it appears in these circumstances that claimant should be reimbursed in the amount provided by this bill, for the purpose stated heretofore.

Attention is invited to the reports of the Post Office Department and the Department of Justice, which are appended below. These reports were submitted in connection with an identical bill of the previous Congress.

MARCH 17, 1949.

The honorable the ATTORNEY GENERAL.

DEAR MR. ATTORNEY GENERAL: This will acknowledge your letter of March 1, with which you transmitted a copy of S. 735, a bill for the relief of Leslie A. Connell, of Tacoma, Wash., in the amount of \$2,622, to reimburse him for money expended in satisfying a judgment obtained against him by Frank X. Buettner who was injured in an accident involving a United States mail truck driven by carrier Connell on April 15, 1946.

The suit which formed the basis of this claim might have been brought against the United States under the provisions of the Federal Tort Claims Act. However, the plaintiff elected to sue the carrier personally. It would be inequitable to require the carrier to bear this loss out of his personal funds since the claim was predicated upon an accident in which he was involved in pursuance of his official duties as a mail-truck driver.

I accordingly recommend that the pending bill be given favorable consideration.

Sincerely yours,

J. M. DONALDSON,
Postmaster General.

SEPTEMBER 14, 1949.

HON. PAT McCARRAN,
*Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.*

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice relative to the bill (S. 735) for the relief of Leslie A. Connell.

The bill would provide for payment of the sum of \$2,622 to Leslie A. Connell, of Tacoma, Wash., in full satisfaction of his claim against the United States for reimbursement of the sum of \$2,500 paid by him in satisfaction of a judgment rendered against him as the result of his injuring a pedestrian while driving a Government-owned vehicle in the performance of his duties as a mail collector, and the sum of \$122 paid by him for court costs, attorney fees, and filing fees in connection with such judgment.

In compliance with your request, a report was obtained from the Post Office Department concerning this legislation. That report, which is enclosed, states that the suit which formed the basis of this claim might have been brought against the United States under the provisions of the Federal Tort Claims Act but that

the plaintiff elected to sue the carrier personally. The Post Office Department states that it would be inequitable to require the carrier to bear this loss out of his personal funds since the claim was predicated upon an accident in which he was involved in pursuance of his official duties as a mail-truck driver.

The Post Office Department, accordingly, recommends that the bill be given favorable consideration.

The Department of Justice concurs in the views of the Post Office Department.

The Director of the Bureau of the Budget has advised this Department that there would be no objection to the submission of this report.

Yours sincerely,

PEYTON FORD;

The Assistant to the Attorney General.